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No. 82-976

IN THE SUPREME COURT OF THE

UNITED STATES

October Term, 1982

PEOPLE OF THE STATE OF CALIFORNIA,

Petitioner,

v.

ROSCOE HOWARD, JR.,

Respondent.

BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI

EUGENE R. LORENZ, ESQ.
Attorney at Law
1227 California Avenue
Bakersfield, CA 93304

Phone: (805) 323-8026

Attorney for Respondent

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QUESTION PRESENTED

Should a California Fifth District Court of Appeal determination that the prosecution did not establish the voluntariness of respondent's confession beyond a reasonable doubt be overturned?

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
ARGUMENT	1

TABLE OF CASES CITED

	Page
Harris v. New York 401 U.S. 222	3
Lego v. Twomey (1972) 404 U.S. 477	2
Oregon v. Mathiason (1976) 429 U.S. 494	5
People v. Arnold 66 Cal. 2d 438	6
People v. Brunick 14 Cal. 3d 306	9
People v. Disbrow (1976) 16 C. 3d 101	4
People v. Herdan (1974) 42 Cal. App. 3d 300 116 Cal. Rptr. 641	5
People v. Jiminez (1978) 21 Cal. 3d 565 145 Cal. Rptr. 172 580 P. 2d 672	1
People v. Murtishaw 29 Cal. 3d 733	2
People v. Stroud (1969) 273 Cal. App. 2d 670 78 Cal. Rptr. 270	10

TABLE OF CASES CITED, CONT'D

	Page
People v. Tewksbury (1976) 15 Cal. 3d 953, fn. 10 127 Cal. Rptr. 135 544 P. 2d 1335	2
People v. White 69 Cal. 2d 751	6

STATUTES CODES AND OTHER AUTHORITIES

	Page
California Codes	
Evidence Code § 405	2

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ARGUMENT

THE REVIEWING COURT'S FINDING THAT RESPONDENT'S CONFESSION WAS INVOLUNTARY IS BASED ON THE LAW OF THE STATE OF CALIFORNIA

The California Supreme Court has made clear that state law requires the prosecution to prove a defendant's confession to be voluntary beyond a reasonable doubt. Justice Manuel in People v. Jimenez (1978) 21 Cal. 3d 565, 602; [145 Cal. Rptr. 172;

580 P. 2d 672] considered and rejected the lesser federal standard of proof by a preponderance of the evidence.

> "In 1972, however, the Supreme Court held, in Lego v. Twomey (1972) 404 U.S. 477 [30 L. Ed. 2d 618; 92 S. Ct. 619], that for purposes of the federal Constitution, the prosecution need only prove the voluntariness of a confession by a preponderance of the evidence.
>
> "In People v. Tewksbury (1976) 15 Cal. 3d 953, 965, fn. 10 [127 Cal. Rptr. 135, 544 P. 2d 1335], this court, noting the disparity in result between Lego and the pre-Lego California decisions, expressly left open the question which we now decide-whether California law requires a standard of proof stricter than that required by the federal Constitution.

The basis for the Fifth District Court of Appeal's decision is state law. Where there is no conflicting testimony on the Miranda issue the reviewing court must independently determine that defendant's incriminating statement was voluntary and properly admitted. (People v. Murtishaw 29 Cal. 3d. 733, 753.) California Evidence

Code section 405 requires the trial court to make a determination of admissibility of a confession outside the presence of the jury. By judicially declared rule of criminal procedure said finding must be made by a reasonable doubt standard. (See People v. Jiminez, supra, at 605.)

The California State Supreme Court did not decide whether the California State Constitution requires proof of voluntariness by a reasonable doubt standard in Jiminez. The Court, however, did not reject such a finding. It is not unusual for the California Supreme Court to find an independent basis for exclusion of confessions in the California Constitution. The use of a defendant's statement for impeachment purposes pursuant to Harris v. New York 401 U.S. 222, has been specifically rejected as being inconsistent with the values embodied in the California State

Constitution.

People v. Disbrow (1976) 16 C. 3d 101, 113; [127 Cal. Rptr. 360; 545 P. 2d 272] reads, in part, as follows:

> "We therefore hold that the privilege against self-incrimination of article I, section 15, of the California Constitution precludes use by the prosecution of any extrajudicial statement by the defendant, whether inculpatory or exculpatory, either as affirmative evidence or for purposes of impeachment, obtained during custodial interrogation in violation of the standards declred in Miranda and its California progeny. Accordingly, we overrule Nudd and declare that Harris is not persuasive authority in any state prosecution in California.

The Appellate Court's decision in the instant case is predicated on the California Supreme Court's judicially declared rules, the California Evidence Code, the California State Constitution and the case law of the State of California.

The Fifth District Court of Appeals correctly applied the case law of the State

of California in determining that respondent's confession was not proven to be voluntary beyond a reasonable doubt. The Appellate Court relied on the four factor test of People v. Herdan (1974) 43 C.A. 3d 300; [116 Cal. Rptr. 641] in deciding that respondent should have been given Miranda rights prior to police interrogation. In the instant case the reviewing court relied on the totality of the circumstances in addition to the four factor analysis of Herdan. In Herdan the Court makes clear that the four factors are "among the most important" in requiring the advisal of Miranda rights.

The length and form of questioning suggest that the primary police purpose for interviewing Howard was to elicit incriminating statements. Unlike Oregon v. Mathiason (1976) 429 U.S. 494, the police had reliable independent information that

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respondent was involved in attempted robbery and homicide. Investigation had focused on respondent as a suspect prior to his interview largely because the police had interviewed co-defendant Terry Beheler before contacting respondent. In two California Supreme Court cases a defendant's confession had been held inadmissible where the defendant has voluntarily gone to the police station (People v. Arnold 66 Cal. 2d 438; People v. White 69 Cal. 2d 751).

The court in Arnold recognized the psychologically coercive nature of interrogation designed to elicit incriminating responses in a police controlled environment.

In People v. Arnold, supra, at page 447, the Court states, in part, as follows:

> "The vice of the custodial interrogation which these cases condemned lay in the psychological coercion implicit in interrogation in the isolated chamber from which the

> suspect may reasonably believe he cannot leave. In such circumstances the person detained or arrested finds himself completely and suddenly cut off from freedom of movement. An involuntary immobilization by law enforcement officers dramatizes the fact that the individual stands suspected or accused of crime. Lacking knowledge of his constitutional rights, he may feel that he can extricate himself from the situation only by submitting to interrogation.

The totality of circumstances in the instant case is similar to Arnold. Respondent was asked a series of incriminating questions in a one-on-one police interview. Howard was not advised of the seriousness of the situation, the law of aiding and abetting, the fact that the police were interested in charging defendant with first degree murder, or his right to consult with an attorney prior to interview.

This court's summary opinion in Oregon v. Mathiason is distinguishable. The primary distinction from Mathiason is the fact that the Fifth District Court of

Appeal's decision is based on the case law of the State of California, the California State Constitution, and judicial rules and principles of law enunciated by the California Supreme Court. No independent state ground existed in the Mathiason case.

The California Supreme Court has advocated strong policy reasons against the admission of involuntary confessions. Justice Manuel, in People v. Jiminez, supra, at page 605, eloquently articulates the judicial policy of the State of California and the value system underlying California's deviation from United States Supreme Court constitutional construction as follows:

> "The privilege against self-incrimination, which is guaranteed by both the federal and California Constitution, protects an accused against product of a rational intellect and a free will. . ."
>
> "The high value that our system of justice places on this right of the accused to be free from compulsory self-incrimination is reflected in

the special safeguards that have been designed to preserve that right. . ."

Further, at page 606, the Court states:

". . .[U]nder the preponderance of the evidence test, a trial court will more often resolve factual conflicts in the evidence in favor of admitting a challenged confession, and this will correspondingly increase the risk that some involuntary confessions will thereby be admitted. The contrary result would obtain, however, if the reasonable doubt standard were applied, and this would thus decrease the risk that involuntary confessions would be admitted. (See Lego v. Twomey, supra, at p. 493 [30 L. Ed. 2d at pp. 629-620].)

"Given the strong policies underlying the privilege against self-incrimination, which require exclusion of any coerced confession, and which mandate automatic reversal of a conviction whenever a coerced confession has been used against the accused at trial, it is apparant that the standard of proof for determining the admissibility of confessions in the first instance should be that standard which minimizes the risk to the greatest extent possible, that a coerced confession will be admitted into evidence at trial. There is an additional reason for requiring the reasonable doubt standard. We have said that the more serious the consequences resulting from an erroneous determination of the issue involved, the stricter will be the standard of proof that is required (People v.

Burnick 14 Cal. 3d 306). The consequences reuslting from an erroneous determination of the voluntariness issue are especially severe, because the trial court's decision is almost always determinative of the issue. . ."

"We are also persuaded that application of the reasonable doubt standard in determining the admissibility of a confession may, in some instances, have a salutary effect on the ultimate fact-finding process by reducing the possibility that coerced confessions in general will be admitted and thereby the possibility that coerced false confessions will be admitted. . ."

"Although a defendant must be allowed to present such evidence of coercion to show why his confession should not be believed, he is not, however, necessarily assured that in so doing he will prevail. For it cannot be denied that a confession, which admits every element of the prosecution's case, is ordinarily given overwhelming weight by the jury, and therefore, the defendant may not always be able to convince the jury to disregard this most devastating evidence of his guilt which emanated from his own mouth (People v. Stroud (1969) 273 Cal. App. 2d 670, 678 [78 Cal. Rptr. 270], even when this evidence should, in fact, be viewed with distrust. . ."

The Fifth District Court of Appeal's decision is soundly founded upon the law of the State of California. The decision should be affirmed.

Respectfully submitted,

EUGENE R. LORENZ

Attorney for Respondent.

STATE OF CALIFORNIA)
) ss.
COUNTY OF KERN)

EUGENE R. LORENZ, being duly sworn, deposes and says: That affiant is over the age of 18 years, and not a party to the within action; that affiant's place of employment and business address is 1227 California Avenue, Bakersfield, Calfiornia 93304; that on the 1st day of April, 1983, affiant enclosed ____ true copy/copies of the within BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI in an envelope for each of the persons named below, addressed to each of them at the address set out immediately below each respective name, sealed said envelope, and deposited it in the United States Mail at the City of Bakersfield, County of Kern, State of California, with postage thereon fully prepaid; that there is delivery service by United States Mail at each of the places so addressed, or there is regular communication by mail between the said place of mailing and each of the places so addressed:

Hon. Kevin A. Swanson, Clerk
California Court of Appeal
Fifth Appellate District
2550 Mariposa Street
Room 5077
Fresno, CA 93721

Edward R. Jagels
District Attorney, Kern Cty.
Civic Center
1215 Truxtun Ave.
Bakersfield, CA 93301

Hon. Laurence P. Gill, Clerk
California Supreme Court
350 McAllister St., Rm. 4050
San Francisco, CA 94102

John Van de Kamp
Attorney General of the
State of California
555 Capitol Mall, Suite 350

Hon. Gale S. Enstad
County Clerk
Kern County Superior Court
1415 Truxtun Ave.
Bakersfield, CA 93301

Subscribed and sworn to before me
this 1st day of April, 1983.

Notary Public, County of Kern
Irene B. Thomas

OFFICIAL SEAL
IRENE B. THOMAS
NOTARY PUBLIC-CALIFORNIA
PRINCIPAL OFFICE IN
KERN COUNTY
My Commission Expires Mar. 29, 1985

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PROOF OF MAILING--AFFIDAVIT

I, EUGENE R. LORENZ, the attorney for Roscoe Howard, Jr., respondent herein, hereby certify that on the 1st day of April, 1983, I deposited in the United States Post Office located at 1730 18th Street, Bakersfield, Calfiornia, with first-class postage prepaid, and properly addressed to the Clerk of the Supreme Court of the United States, within the time allowed for filng, the foregoing Brief In Opposition To Petition For Writ of Certiorari.

EUGENE R. LORENZ
Attorney for Respondent

Subscribed and sworn to before me at Bakersfield, California, this 1st day of April, 1983.

Irene B. Thomas, Notary Public
State of California

OFFICIAL SEAL
IRENE B. THOMAS
NOTARY PUBLIC-CALIFORNIA
PRINCIPAL OFFICE IN
KERN COUNTY
My Commission Expires Mar. 29, 1985